

August 27, 2010

EA-10-138

Mark C. Israel, P.E.
President
Universal Engineering Sciences, Inc.
3532 Maggie Boulevard
Orlando, FL 32811

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 03038028/2010001

Dear Mr. Israel:

This refers to the inspection conducted on April 23 and 27, 2010, at the Universal Engineering Sciences, Inc. (UES) office in Pensacola, Florida. The inspection consisted of an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the conditions of your NRC license, issued on May 14, 2009. In addition to the on-site review, the inspection also involved consideration of additional information UES provided the NRC in correspondence received by the NRC on June 1, 2010, and in telephone conversations between the NRC inspector and UES staff on May 10, 2010, June 7, 2010, and June 23, 2010. This information related to training and locations within areas of exclusive federal jurisdiction at which UES had used radioactive materials prior to receiving its NRC license that was issued on May 14, 2009. The findings of the inspection were discussed with you and Jim Lewis of your staff by telephone during an exit meeting on July 7, 2010. The NRC sent you a letter dated July 30, 2010, which enclosed the referenced inspection report.

Based on the results of this inspection, three apparent violations were identified. In a telephone conversation on July 30, 2010, Ms. Marie Miller of my staff informed you that the NRC was considering escalated enforcement for one of the apparent violations involving the failure by UES, before it had applied for an NRC license, to file an NRC Form 241 at least three days prior to engaging in licensed activities in areas of exclusive federal jurisdiction within an Agreement State, as required by 10 CFR 150.20(b). You were also informed that we had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from UES. On August 5, 2010, you indicated that a PEC would not be necessary, and that UES did not plan to submit a written response.

Therefore, based on the information developed during the inspection and the information that UES provided in its communications noted above, the NRC has determined that violations of NRC requirements occurred, and are cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violations are described in detail in the subject inspection report issued on July 30, 2010. The most significant violation involved the failure by UES to file for reciprocity prior to working in areas of exclusive federal jurisdiction. Prior to applying for a specific NRC license, UES had only licenses issued by the State of Florida (an Agreement State) that authorized the storage, use, and transfer of portable nuclear gauges within that

State. Such licenses do not authorize use of radioactive material in areas of exclusive federal jurisdiction. 10 CFR 150.20 grants an NRC general license to Agreement State licensees allowing them to conduct the licensed activities authorized by the Agreement State, in areas of exclusive federal jurisdiction, provided that the Agreement State licensees file with the NRC, using NRC Form 241, "Report of Proposed Activities in Non-Agreement States," at least three days prior to engaging in licensed activities within that jurisdiction. However, during the NRC inspection, the NRC identified that on multiple dates between January 2008, and May 13, 2009, UES conducted testing using portable gauges containing radioactive material at several military bases, as well as other federal facilities under exclusive federal jurisdiction, in Florida and Georgia, without filing NRC Form 241 with the NRC. UES was made aware of this requirement as a result of inquiries by military staff at the federal facilities, and subsequently applied for the specific NRC license in lieu of filing the NRC Form 241. This violation impacted the NRC's regulatory process because the NRC was not provided an opportunity to conduct inspections of licensed activities since the NRC was not informed that portable gauges were being used at these locations. In accordance with the NRC Enforcement Policy, the NRC has categorized this violation at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement actions within the last two years or the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC has concluded that credit is warranted for your corrective action taken to address the violation because on April 23, 2009, UES submitted an application for a specific NRC license to authorize the use of licensed materials in NRC jurisdiction.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort in the future.

Two additional violations, also documented in the Notice, have been categorized in accordance with the NRC Enforcement Policy as SL IV. The circumstances surrounding these violations are documented in detail in the above-referenced inspection report.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter, in the communication received by the NRC on June 1, 2010, in the records of telephone conversations between the NRC inspector and UES staff on May 10, 2010, June 7, 2010, and June 23, 2010, and in Inspection Report No. 03038028/2010001. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading->

[rm/adams.html](http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/ Original Signed by David C. Lew

Marc L. Dapas
Acting Regional Administrator

Docket No. 03038028
License No. 09-31368-01

Enclosure: Notice of Violation

cc w/encl:
J. Lewis, Radiation Safety Officer
State of Florida

<http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/ Original Signed by David C. Lew for

Marc L. Dapas
Acting Regional Administrator

Docket No. 03038028
License No. 09-31368-01

Enclosure: Notice of Violation

cc w/encl:
J. Lewis, Radiation Safety Officer
State of Florida

SUNSI Review Complete: MMM

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\EA-10-138 Universal Engineering Reciprocity NOV-III.doc

After declaring this document "An Official Agency Record" it will be released to the Public. ADAMS Accession No.: ML102390355

To receive a copy of this document, indicate in the box: "C"= Copy without attachment/enclosure "E"=Copy with attachment/enclosure "N"=No copy

OFFICE	RI/ORA		RI/DNMS		RI/DNMS		RI/ORA		RI/ORA	
NAME	M McLaughlin/ MMM* *		M Miller/ MTM**		J Kinneman/ JDK**		K Farrar**		D Holody/ M McLaughlin for**	
DATE	8/09/10		8/10/10		8/12/10		8/24/10		8/13/10	
OFFICE	HQ/OE*		RI/ORA							
NAME	LSreevinas via email		M Dapas / DCL for							
DATE	8/20/10		08/27/10							

OFFICIAL RECORD COPY

*HQ to perform a quick review. ** see previous concurrence page

DISTRIBUTION w/encl:

ADAMS (PARS)

SECY

CA

OEMAIL

OEWEB

W Borchardt, EDO

M Virgilio, DEDMRT

L Trocine OEDO

R Zimmerman, OE

A Campbell, OE

N Hilton, OE

N Riddick, OE

N Hasan, OE

L Sreenivas, OE

P Nibert, OE

M G Crutchley, OE

C Miller, FSME

C Carpenter, FSME

R Lewis, FSME

J Luehman, FSME

M Burgess, FSME

G Villamar, FSME

Enforcement Coordinators

RII, RIII, RIV (C Evans; S Orth; W. Jones)

C Scott, OGC

E Hayden, OPA

H Bell, OIG

C McCrary, OI

M Williams, OCFO

S Titherington-Buda, OCFO

J Kinneman, DNMS, RI

P Henderson, DNMS, RI

M Miller, DNMS, RI

S Wilson, DNMS, RI

D Screnci, PAO-RI / N Sheehan, PAO-RI

D Janda, SAO-RI

K Farrar, RI

D Holody, RI

A DeFrancisco, RI

M McLaughlin, RI

C O'Daniell, RI

S Villar, RI

R1DNMSMailResource

Region I OE Files (with concurrences)

NOTICE OF VIOLATION

Universal Engineering Sciences, Inc.
Orlando, Florida

Docket No. 030-38028
License No. 09-31368-01
EA-10-138

During an NRC inspection conducted on April 23 and 27, 2010, as well as an in-office review of information provided by the licensee received on June 1, 2010, and in telephone conversations between the NRC inspector and UES staff on May 10, 2010, June 7, 2010, and June 23, 2010, for which a telephonic exit meeting was held on July 7, 2010, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.33(a) states, in part, that no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in areas of exclusive federal jurisdiction within Agreement States subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in areas of exclusive federal jurisdiction within Agreement States shall, at least three days before engaging in each such activity for the first time in a calendar year, file four copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between January 2008, and May 13, 2009, Universal Engineering Sciences, Inc. (UES), which at the time only held Florida (Agreement State) licenses, engaged in activities involving the use of byproduct material in areas of exclusive federal jurisdiction within an Agreement State without, at least three days before engaging in each such activity for the first time in the calendar year, filing NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the NRC Region I Regional Administrator, the Regional Administrator of the appropriate NRC regional office. Specifically, UES used portable gauges containing cesium-137 and americium-241 sealed sources, at numerous areas of exclusive federal jurisdiction within the States of Florida and Georgia, without obtaining a specific license issued by the NRC or filing NRC Form-241 with the NRC, as required.

This is a Severity Level III violation (Supplement VI).

- B. 10 CFR 71.5(a) states, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR parts 107, 171 through 180, and 390 through 397.

49 CFR 171.8 defines a hazmat employee, in part, as a person who is employed by a hazmat employer and who in the course of such employment directly affects hazardous materials transportation safety, including individuals who load, unload, or handle hazardous materials; prepare hazardous materials for transportation; are responsible for safety of transporting hazardous materials; and operate a vehicle used to transport hazardous materials. This regulation defines a hazmat employer, in part, as a person who employs or uses at least one hazmat employee on a full-time, part time, or temporary basis; and who transports hazardous materials in commerce.

Enclosure

49 CFR 172.702 requires, in part, that each hazmat employer shall ensure that each of its hazmat employees is trained and tested by appropriate means on the training subjects covered in 49 CFR 172.704, and that no hazmat employee may perform any function subject to the requirements of 49 CFR Parts 171-180 unless instructed in the applicable requirements.

49 CFR 172.704(c) requires, in part, that a hazmat employee receive initial training within 90 days after employment or a change in job function, and recurrent training at least once every three years.

Contrary to the above, UES did not provide training for its hazmat employees which satisfied the requirements in 49 CFR Part 172 in that, on multiple occasions in 2008 and 2009, UES employees transported licensed material from a storage location in Pensacola, Florida, over public roads to and from temporary jobsites within areas of exclusive federal jurisdiction, without having completed the necessary training required by 49 CFR 172.704(c). Specifically, licensee records indicate that: 1) an employee received initial training on October 14, 2004, and recurrent training was not provided until April 29, 2010, a period of more than three years; 2) an employee received initial training on July 14, 2003 and recurrent training was not completed as of April 28, 2010, a period of more than three years; and, 3) an employee received initial training on March 17, 1995, and recurrent training was not provided until January 30, 2010, a period of more than three years.

This is a Severity Level IV violation (Supplement V)

- C. Condition 20 of NRC License No. 09-31368-01 states, in part, that UES shall conduct its program in accordance with the statements, representations, and procedures contained in the letter to the NRC dated April 22, 2009 (the UES application for an NRC license). In the April 22, 2009 letter, UES affirmed, in part, that it would implement and maintain the Operating and Emergency Procedures in Appendix H of NUREG- 1556, Volume 1, Revision 1, "Program-Specific Guidance About Portable Gauge Licensees".

Appendix H of NUREG-1556, Volume 1, Revision 1, "Program-Specific Guidance About Portable Gauge Licensees" includes a requirement for portable gauge operators to sign out the gauge in a log book and to sign it in when it is returned to storage.

Contrary to the above, between May 14, 2009, and April 1, 2010, UES did not implement the use of a log book for portable gauge operators to sign portable gauges in and out of storage.

This is a Severity Level IV violation (Supplement VI)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03038028/2010001, in the communication received by the NRC on June 1, 2010, in the records of telephone conversations between the NRC inspector and UES staff on May 10, 2010, June 7, 2010, and June 23, 2010, and in the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-10-138," and send it to the U.S. Nuclear Regulatory Commission,

ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 27th day of August 2010

Enclosure